

REMARKS

Claims 1-23 are pending in the application.

Claims 1-23 are rejected.

Claims 1, 11, 21 and 23 are amended.

Reconsideration and allowance of claims 1-23 is respectfully requested in view of the following:

Responses to Rejections to Claims – 35 U.S.C. §112

Claim 23 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. This rejection is not applicable to the amended claims. The recitation "chassis" is deleted from the claim.

Responses to Rejections to Claims – 35 U.S.C. §103

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howell et al (U.S. Patent No. 5,825,616) (Howell) in view of Viletto (U.S. Patent No. 5,475,626) (Viletto). This rejection is not applicable to the amended claims.

The independent claims 1, 11, 21 and 23 include: a plurality of cells housed in a battery housing having a slot formed therein, wherein a predefined number of cells included in the plurality of cells are removable to define a selective portion of the battery housing; and a speaker assembly housed in a speaker container including a latch thereon, wherein the speaker container is installable in the selective portion such that the slot receives the latch, wherein dimensions of the battery housing having the speaker container installed in the selective portion are substantially unchanged.

As the PTO recognizes in MPEP §2142:

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

The USPTO clearly cannot establish a *prima facie* case of obviousness in connection with the amended claims for the following reasons:

35 U.S.C. §103(a) provides that:

[a] patent may not be obtained...if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.... (emphasis added)

Thus, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. However, the references, alone, or in any combination, do not teach the claimed invention.

Therefore, it is impossible to render the subject matter of the claims as a whole obvious based on a single reference or any combination of the references, and the above explicit terms of the statute cannot be met. As a result, the USPTO's burden of factually supporting a *prima facie* case of obviousness clearly cannot be met with respect to the claims, and a rejection under 35 U.S.C. §103(a) is not applicable.

There is still another compelling, and mutually exclusive, reason why the references cannot be combined and applied to reject the claims under 35 U.S.C. §103(a).

The PTO also provides in MPEP §2142:

[T]he Examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the Examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. ...[I]mpermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

It is beyond the understanding of Applicants as to how the Examiner attempts to apply the locking device of Howell and the battery pack of Viletto to the claimed invention.

In the invention, some (not all) of the batteries of a battery pack are removed and replaced by a speaker housing which latches into the slots of the battery housing. This is neither taught nor suggested by the references.

Thus, in the present case it is clear that the USPTO's combination arises solely from hindsight based on the present disclosure without any reason why a person of ordinary skill in the art would combine the references as required by the claims. Therefore, for this mutually exclusive reason, the USPTO's burden of factually supporting a *prima facie* case of obviousness clearly cannot be met with respect to the claims, and the rejection under 35 U.S.C. §103(a) is not applicable.

Therefore, independent claims 1, 11, 21 and 23 and their respective dependent claims are submitted to be allowable.

In view of all of the above, the allowance of claims 1-23 is respectfully requested.

The amended claims are supported by the original application.

The Examiner is invited to call the undersigned at the below-listed telephone number if a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,



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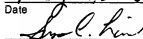
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